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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
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16  
17 **Scott Johnson**

18 Plaintiff,

19 v.

20 **Branham Center LLC**, a California  
21 Limited Liability Company;  
22 **Thuy Truong**

23 Defendants.

24  
25 **Case No.**

26 **Complaint For Damages And**  
27 **Injunctive Relief For Violations**  
28 **Of: Americans With Disabilities**  
Act; Unruh Civil Rights Act

29  
30 Plaintiff Scott Johnson complains of Branham Center LLC, a California  
31 Limited Liability Company; and Thuy Truong; and alleges as follows:

32  
33 **PARTIES:**

34 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a  
35 level C-5 quadriplegic. He cannot walk and also has significant manual  
36 dexterity impairments. He uses a wheelchair for mobility and has a specially  
37 equipped van.

38 2. Defendant Branham Center LLC owned the real property located at or  
39 about 1576 Branham Ln, San Jose, California, in July 2019 and July 2020.

40 3. Defendant Branham Center LLC owns the real property located at or  
41 about 1576 Branham Ln, San Jose, California, currently.

1       4. Defendant Thuy Truong owned Boba Pub located at or about 1568  
2 Branham Ln, San Jose, California, in July 2019 and July 2020.

3       5. Defendant Thuy Truong owns Boba Pub located at or about 1568  
4 Branham Ln, San Jose, California, currently.

5       6. Plaintiff does not know the true names of Defendants, their business  
6 capacities, their ownership connection to the property and business, or their  
7 relative responsibilities in causing the access violations herein complained of,  
8 and alleges a joint venture and common enterprise by all such Defendants.  
9 Plaintiff is informed and believes that each of the Defendants herein is  
10 responsible in some capacity for the events herein alleged, or is a necessary  
11 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
12 the true names, capacities, connections, and responsibilities of the Defendants  
13 are ascertained.

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15       **JURISDICTION & VENUE:**

16       7. The Court has subject matter jurisdiction over the action pursuant to 28  
17 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
20 of action, arising from the same nucleus of operative facts and arising out of  
21 the same transactions, is also brought under California's Unruh Civil Rights  
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23       9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
24 founded on the fact that the real property which is the subject of this action is  
25 located in this district and that Plaintiff's cause of action arose in this district.

26

27       **FACTUAL ALLEGATIONS:**

28       10. Plaintiff went to Boba Pub in July 2019 (twice) and July 2020 with the

1 intention to avail himself of its goods motivated in part to determine if the  
2 defendants comply with the disability access laws.

3 11. Boba Pub is a facility open to the public, a place of public  
4 accommodation, and a business establishment.

5 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed  
6 to provide wheelchair accessible parking in conformance with the ADA  
7 Standards as it relates to wheelchair users like the plaintiff.

8 13. Boba Pub provides parking to its customers but fails to provide  
9 wheelchair accessible parking.

10 14. A problem that plaintiff encountered is that there were slopes in the  
11 parking space marked and reserved for persons with disabilities that exceeded  
12 2.1%.

13 15. Plaintiff believes that there are other features of the parking that likely  
14 fail to comply with the ADA Standards and seeks to have fully compliant  
15 parking available for wheelchair users.

16 16. On information and belief the defendants currently fail to provide  
17 wheelchair accessible parking.

18 17. Additionally, on the dates of the plaintiff's visits, the defendants failed  
19 to provide wheelchair accessible door hardware in conformance with the ADA  
20 Standards as it relates to wheelchair users like the plaintiff.

21 18. Boba Pub provides door hardware to its customers but fails to provide  
22 wheelchair accessible door hardware.

23 19. A problem that plaintiff encountered is that the entrance door hardware  
24 had a pull bar style handle that required that grasping to operate.

25 20. Plaintiff believes that there are other features of the door hardware that  
26 likely fail to comply with the ADA Standards and seeks to have fully compliant  
27 door hardware available for wheelchair users.

28 21. On information and belief the defendants currently fail to provide

1 wheelchair accessible door hardware.

2 22. Moreover, on the dates of the plaintiff's visits, the defendants failed to  
3 provide wheelchair accessible restrooms in conformance with the ADA  
4 Standards as it relates to wheelchair users like the plaintiff.

5 23. Boba Pub provides restrooms to its customers but fails to provide  
6 wheelchair accessible restrooms.

7 24. A few problems that plaintiff encountered is that the restroom door  
8 hardware had a traditional round knob handle. The restroom mirror was too  
9 high. Additionally, the restroom sink had a cabinet style sink.

10 25. Plaintiff believes that there are other features of the restrooms that  
11 likely fail to comply with the ADA Standards and seeks to have fully compliant  
12 restrooms available for wheelchair users.

13 26. On information and belief the defendants currently fail to provide  
14 wheelchair accessible restrooms.

15 27. Additionally, on the dates of the plaintiff's visits, the defendants failed  
16 to provide wheelchair accessible dining surfaces in conformance with the ADA  
17 Standards as it relates to wheelchair users like the plaintiff.

18 28. Boba Pub provides dining surfaces to its customers but fails to provide  
19 wheelchair accessible dining surfaces.

20 29. The problem that plaintiff encountered is the lack of sufficient knee or  
21 toe clearance under the dining surfaces for wheelchair users.

22 30. Plaintiff believes that there are other features of the dining surfaces that  
23 likely fail to comply with the ADA Standards and seeks to have fully compliant  
24 dining surfaces available for wheelchair users.

25 31. On information and belief the defendants currently fail to provide  
26 wheelchair accessible dining surfaces.

27 32. Finally, on the dates of the plaintiff's visits, the defendants failed to  
28 provide wheelchair accessible service counters in conformance with the ADA

1 Standards as it relates to wheelchair users like the plaintiff.

2       33. Boba Pub provides service counters to its customers but fails to provide  
3 wheelchair accessible service counters.

4       34. A problem that plaintiff encountered was that the service counter was  
5 too high and there was no lowered portion of the service counter suitable for  
6 wheelchair users.

7       35. Plaintiff believes that there are other features of the service counters  
8 that likely fail to comply with the ADA Standards and seeks to have fully  
9 compliant service counters available for wheelchair users.

10      36. On information and belief the defendants currently fail to provide  
11 wheelchair accessible service counters.

12      37. These barriers relate to and impact the plaintiff's disability. Plaintiff  
13 personally encountered these barriers.

14      38. As a wheelchair user, the plaintiff benefits from and is entitled to use  
15 wheelchair accessible facilities. By failing to provide accessible facilities, the  
16 defendants denied the plaintiff full and equal access.

17      39. The failure to provide accessible facilities created difficulty and  
18 discomfort for the Plaintiff.

19      40. The defendants have failed to maintain in working and useable  
20 conditions those features required to provide ready access to persons with  
21 disabilities.

22      41. The barriers identified above are easily removed without much  
23 difficulty or expense. They are the types of barriers identified by the  
24 Department of Justice as presumably readily achievable to remove and, in fact,  
25 these barriers are readily achievable to remove. Moreover, there are numerous  
26 alternative accommodations that could be made to provide a greater level of  
27 access if complete removal were not achievable.

28      42. Plaintiff will return to Boba Pub to avail himself of its goods and to

1 determine compliance with the disability access laws once it is represented to  
 2 him that Boba Pub and its facilities are accessible. Plaintiff is currently  
 3 deterred from doing so because of his knowledge of the existing barriers and  
 4 his uncertainty about the existence of yet other barriers on the site. If the  
 5 barriers are not removed, the plaintiff will face unlawful and discriminatory  
 6 barriers again.

7 43. Given the obvious and blatant nature of the barriers and violations  
 8 alleged herein, the plaintiff alleges, on information and belief, that there are  
 9 other violations and barriers on the site that relate to his disability. Plaintiff will  
 10 amend the complaint, to provide proper notice regarding the scope of this  
 11 lawsuit, once he conducts a site inspection. However, please be on notice that  
 12 the plaintiff seeks to have all barriers related to his disability remedied. See  
 13 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 14 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 15 disability removed regardless of whether he personally encountered them).

16

17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
 18 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 44. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 21 again herein, the allegations contained in all prior paragraphs of this  
 22 complaint.

23 45. Under the ADA, it is an act of discrimination to fail to ensure that the  
 24 privileges, advantages, accommodations, facilities, goods and services of any  
 25 place of public accommodation is offered on a full and equal basis by anyone  
 26 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 27 § 12182(a). Discrimination is defined, *inter alia*, as follows:

28 a. A failure to make reasonable modifications in policies, practices,

1 or procedures, when such modifications are necessary to afford  
2 goods, services, facilities, privileges, advantages, or  
3 accommodations to individuals with disabilities, unless the  
4 accommodation would work a fundamental alteration of those  
5 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

6 b. A failure to remove architectural barriers where such removal is  
7 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
8 defined by reference to the ADA Standards.  
9 c. A failure to make alterations in such a manner that, to the  
10 maximum extent feasible, the altered portions of the facility are  
11 readily accessible to and usable by individuals with disabilities,  
12 including individuals who use wheelchairs or to ensure that, to the  
13 maximum extent feasible, the path of travel to the altered area and  
14 the bathrooms, telephones, and drinking fountains serving the  
15 altered area, are readily accessible to and usable by individuals  
16 with disabilities. 42 U.S.C. § 12183(a)(2).

17 46. When a business provides facilities such as parking, it must provide  
18 accessible parking.

19 47. Here, accessible parking has not been provided in conformance with the  
20 ADA Standards.

21 48. When a business provides facilities such as door hardware, it must provide  
22 accessible door hardware.

23 49. Here, accessible door hardware has not been provided in conformance with  
24 the ADA Standards.

25 50. When a business provides facilities such as restrooms, it must provide  
26 accessible restrooms.

27 51. Here, accessible restrooms have not been provided in conformance with  
28 the ADA Standards.

1       52. When a business provides facilities such as dining surfaces, it must  
2 provide accessible dining surfaces.

3       53. Here, accessible dining surfaces have not been provided in  
4 conformance with the ADA Standards.

5       54. When a business provides facilities such as service counters, it must  
6 provide accessible service counters.

7       55. Here, accessible service counters have not been provided in  
8 conformance with the ADA Standards.

9       56. The Safe Harbor provisions of the 2010 Standards are not applicable  
10 here because the conditions challenged in this lawsuit do not comply with the  
11 1991 Standards.

12       57. A public accommodation must maintain in operable working condition  
13 those features of its facilities and equipment that are required to be readily  
14 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

15       58. Here, the failure to ensure that the accessible facilities were available  
16 and ready to be used by the plaintiff is a violation of the law.

17

18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
19 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
20 Code § 51-53.)**

21       59. Plaintiff repleads and incorporates by reference, as if fully set forth  
22 again herein, the allegations contained in all prior paragraphs of this  
23 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,  
24 that persons with disabilities are entitled to full and equal accommodations,  
25 advantages, facilities, privileges, or services in all business establishment of  
26 every kind whatsoever within the jurisdiction of the State of California. Cal.  
27 Civ. Code § 51(b).

28       60. The Unruh Act provides that a violation of the ADA is a violation of the

1 Unruh Act. Cal. Civ. Code, § 51(f).

2 61. Defendants' acts and omissions, as herein alleged, have violated the  
3 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
4 rights to full and equal use of the accommodations, advantages, facilities,  
5 privileges, or services offered.

6 62. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
7 discomfort or embarrassment for the plaintiff, the defendants are also each  
8 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
9 (c).)

10 63. Although the plaintiff encountered frustration and difficulty by facing  
11 discriminatory barriers, even manifesting itself with minor and fleeting  
12 physical symptoms, the plaintiff does not value this very modest physical  
13 personal injury greater than the amount of the statutory damages.

14

15 **PRAYER:**

16 Wherefore, Plaintiff prays that this Court award damages and provide  
17 relief as follows:

18 1. For injunctive relief, compelling Defendants to comply with the  
19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
20 plaintiff is not invoking section 55 of the California Civil Code and is not  
21 seeking injunctive relief under the Disabled Persons Act at all.

22 2. Damages under the Unruh Civil Rights Act, which provides for actual  
23 damages and a statutory minimum of \$4,000 for each offense.

24 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
25 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1 Dated: November 16, 2020

CENTER FOR DISABILITY ACCESS

2 By: \_\_\_\_\_  
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4   
5 Amanda Seabock, Esq.  
6 Attorney for plaintiff

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